

**KENTUCKY PERSONNEL BOARD  
MINUTES OF JULY 18, 2008**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Greg Higgins, on, July 18, 2008, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Greg Higgins, Chairman  
Christine J. Goodmann, Vice-Chairman  
Betty Gibson, Member  
Lisa T. Hendricks, Member  
Robert B. Frazer, Member  
M. Suzanne Cassidy, Member  
Mark A. Sipek, Executive Director and Secretary  
Linda R. Morris, Administrative Section Supervisor  
Cynthia Perkins, Administrative Specialist

Board personnel absent:

Boyce A. Crocker, General Counsel

2. **READING OF THE MINUTES OF REGULAR MEETING HELD JUNE 13, 2008**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Higgins asked for additions or corrections. Ms. Gibson moved to approve the minutes as submitted, Ms. Goodmann seconded, and the motion carried 5-0. (Chairman Higgins does not vote unless noted.) The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek informed the Board members that the move to 28 Fountain Place has been completed, with the exception of the installation of the new video equipment.

Mr. Sipek advised that we are without our General Counsel as Mr. Crocker is on military leave. However, Mr. Crocker has the office laptop and can assist the office by answering any legal questions or other issues via e-mail or phone.

The Board members were provided a copy of an Opinion and Order from Judge Keller, Court of Appeals, dismissing *Health and Family Services v. Lowell Workman* (2007-CA-798-MR). The issue presented to the Court of Appeals was whether the Franklin Circuit Court had correctly awarded attorney fees to Appellant's attorney. The Court of Appeals found that the Agency failed to name Appellant's attorney as a party, which was the Agency's fatal error.

As a final note, Mr. Sipek said he was open to suggestions from the Board Members concerning the setup of the new Board room.

At the conclusion of Mr. Sipek's report, Chairman Higgins asked for the Personnel Cabinet's Report.

#### 4. PERSONNEL CABINET'S REPORT

Dan Egbers, Executive Director for Office of Legal Services, was present for the Personnel Cabinet and reported the following:

Mr. Egbers stated that the Personnel Cabinet has developed a new web page with a new look and has an animated navigation tool.

Mr. Egbers advised that through Executive Order 2008-471 the Governor has instituted the Governor's Employee Advisory Council (GEAC) [which Governor Patton started in 2001 and was discontinued during the Fletcher administration.] GEAC had their first meeting on July 2, 2008. There are three state agencies represented on the council, along with the employee organizations that were previously elected in 2001. However, any employee or employee organization can (after 60 days of effective date and with 30% of signature cards from employees with similar interests, or job duties, etc.) petition the Secretary of Labor to have a new election conducted. One problem for GEAC is the mediation program that was setup in 2001. All mediation was to be conducted through the Department of Labor; however, Mr. Egbers stated that a lot of the people who dealt with mediation have left the Department. Discussions are being held by GEAC to clarify their essential functions and how involved an employee organization can participate in meetings preliminary to discipline (i.e. the unauthorized practice of law), etc. A hot-line for comments and complaints has been set up and is being monitored by Mr. Charles Wells. One complaint is that employees are unhappy with union members showing up at their homes. In response to Mr. Frazer's question about the unions, Mr. Egbers explained that these include the UAW, Teamsters, SEIU, and others under GEAC and that these unions were elected by the employees in 2001 to represent their interests. Mr. Frazer wanted to know why the unions were brought back, Mr. Egbers stated that the Governor felt that it was important for the employees to have a say in who they wished to represent their interests in discussing terms and conditions of employment. Mr. Egbers stated that he had the duty of negotiating this back in 2001. Mr. Egbers stated they are in the process of preparing a proposal as to what the Master Agreement should state.

Mr. Egbers mentioned House Bill 1, which passed during the special session. Of particular interest is the incentive window which closes at midnight December 31, 2008. Mr. Egbers announced that he was retiring September 30, 2008. Under HB 1, Mr. Egbers explained what happens if a retiree wants to come back. There can be no agreement between the Agency and the employee to be hired back and there is a 90-day wait to come back into state government. Chairman Higgins asked about non-classified employees. Mr. Egbers stated that unclassified, ungraded, are not governed by regulation. However, unclassified, graded provides that a retiree can be rehired at entry level up to midpoint and needs to wait 90 days before coming back. Also under HB1 there will be no retirement account set up for returning retirees. Chairman Higgins asked that since there was no second retirement, what was the purpose of the 90-day waiting period. Mr. Egbers stated that the General Assembly chose to impose that.

Mr. Egbers provided background information on the emergency Veterans Preference regulation 101 KAR 2:066, that was previously distributed to the Board Members. Mr. Egbers would like to have the Board's approval today so the regulation could be filed. Mr. Egbers stated that as far as employee selection, a written test was not the most reliable means to determine whether an applicant could successfully serve in a state position. Indirectly, Veterans' preference points were affected because testing was eliminated by the Personnel Cabinet. In order to comply with statute, the Personnel Cabinet wanted to provide a meaningful way for Veterans to get an opportunity to have a fair chance during the employment process. Therefore, the Cabinet will identify on a register certificate those who are entitled to Veterans preference, including those on Internal Mobility. Basically, this offers up to five applicants with Veterans' preference an opportunity to interview with the employing agency. Ms. Cassidy asked how the agency will select five with Veterans preference if more apply. Mr. Egbers responded that they will base which Veterans to select for interview by using the five criteria [Seniority, qualifications, record of performance, performance evaluations and conduct - KRS 18A.0751)].

Ms. Goodmann moved to approve the emergency Veterans Preference regulation 101 KAR 2:066. Ms. Cassidy seconded and the motion carried 6-0, with Chairman Higgins voting.

Chairman Higgins asked Secretary Brown to come forward for the petitioned position.

## **5. PETITIONED POSITION**

- A. Justice and Public Safety Cabinet, Department of Juvenile Justice (DJJ)  
--Deputy Commissioner of Program Operations

Present were Secretary J. Michael Brown, Appointing Authority for the Justice and Public Safety Cabinet, and Ms. Sherri Gillum. Secretary Brown stated that DJJ wanted to establish a position of Deputy Commissioner of Program Operations. This person will oversee the Regional Division Directors and services provided to juveniles who have been adjudicated and placed in the care of DJJ for a period of treatment up to and sometimes beyond the juvenile's eighteenth birthday. Secretary Brown stated that funds were available in the budget. Secretary Brown stated that this was a non-merit position, specifically for policy making and for confidentiality reasons.

Ms. Cassidy moved to approve the petitioned position for Deputy Commissioner of Program Operations. Ms. Hendricks seconded and the motion carried 5-0.

## 6. ORAL ARGUMENTS

### A. Terry Day and William Cornelius, Jr. v. Transportation Cabinet and Scott Huddleston

Present were the Appellants, Mr. Terry Day and Mr. William Cornelius, *pro se*; the Hon. Ed Logan, counsel for Appellee, who had requested oral arguments; and the Intervenor, Mr. Scott Huddleston. The parties answered questions from the Board.

### B. Roger Grubb v. Finance and Administration Cabinet

Present were the Appellant, Mr. Roger Grubb, *pro se*, who had requested oral arguments, and the Hon. Celia Dunlap, counsel for Appellee. The parties answered questions from the Board.

### C. David Waller v. Finance and Administration Cabinet

Present were the Hon. Paul Fauri, counsel for Appellant, and the Hon. Celia Dunlap, counsel for Appellee, who had requested oral arguments. The parties answered questions from the Board.

## 7. MOTIONS

### A. Dan Hall v. Transportation Cabinet (on remand) --Agreed Order Withdrawing Request for Hearing --Order Canceling Evidentiary Hearing

[The parties provided written pleadings and did not appear in person.]

Mr. Frazer moved to approve the Agreed Order Withdrawing the Request for Hearing. Ms. Gibson seconded and the motion carried 5-0.

## 8. REQUESTS FOR INVESTIGATION

### A. Shawn Rudd against Justice and Public Safety Cabinet (Requested in appeal) --Response by Justice and Public Safety Cabinet

[The parties provided written pleadings and did not appear in person.]

Before going into closed session, Mr. Sipek presented a plaque to former Board Member Rosemary Center commemorating her tenure with the Board and thanking her for her service. [Ms. Center was appointed to the Board on November 22, 2006, and she served until her term ended January 1, 2008.]

## 9. CLOSED SESSION

Ms. Hendricks moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Mr. Frazer seconded. Chairman Higgins stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (11:09 a.m.)

Ms. Gibson moved to return to open session. Mr. Frazer seconded and the motion carried 5-0 (12:44 p.m.)

## 10. CASES TO BE DECIDED:

### REQUEST FOR INVESTIGATION

- A. Shawn Rudd against Justice and Public Safety Cabinet (Requested in appeal)  
--Response by Justice and Public Safety Cabinet

Mr. Frazer moved to deny the request for investigation. Ms. Hendricks seconded and the motion carried 5-0, with Chairman Higgins voting and Ms. Cassidy recusing.

The Board reviewed the following cases. At that time, the Board considered the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable. The Board has access to and may review any part of the entire administrative record including video tapes of evidentiary hearings and pre-hearing conferences. (See KRS 13B.120).

- A. Terry Day and William Cornelius, Jr. v Transportation Cabinet and Scott Huddleston

Mr. Frazer moved to defer this matter to the next Board meeting. Ms. Cassidy seconded and the motion carried 5-0.

B. Roger Grubb v. Finance and Administration Cabinet

Ms. Hendricks moved to note Appellant's exceptions and oral arguments and to accept the recommended order dismissing the appeal. Ms. Goodmann seconded and the motion carried 5-0.

C. David Waller v. Finance and Administration Cabinet

Ms. Hendricks moved to defer this matter to the next Board meeting. Mr. Frazer seconded and the motion carried 5-0.

D. Charles Batson v. Office of the Attorney General and James R. Carpenter – two appeals

Ms. Cassidy moved to note Appellant's exceptions, Intervenor's reply, and Appellee's Response and to accept the recommended order, with clerical corrections, dismissing the appeal. Ms. Gibson seconded and the motion carried 5-0.

E. David Randolph v. Justice and Public Safety Cabinet – 2 appeals

Mr. Frazer moved to note Appellant's exceptions and Appellee's response and to accept the recommended order dismissing the appeal. Ms. Goodmann seconded and the motion carried 5-0.

F. Blaine Kohl v. Office of the Attorney General - **Deferred from June**

Ms. Goodmann moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 5-0.

G. Gary Gilpin v. Cabinet for Health and Family Services

Ms. Gibson moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 5-0.

H. Allen Harris and David Smith v. Justice and Public Safety Cabinet

Ms. Gibson moved to accept the recommended order, with clerical correction, dismissing the appeal of Mr. Smith and sustaining to the extent that the demotion of Mr. Harris was converted to a 20-day suspension. Mr. Frazer seconded and the motion carried 4-0, with Ms. Cassidy recusing.

I. Charles Hatton v. Department of Agriculture

Ms. Cassidy moved to accept the recommended order dismissing the appeal as to the reprimand and sustaining as to sick leave. Mr. Frazer seconded and the motion carried 5-0.

J. Rebecca Hendon v. Justice and Public Safety Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 4-0, with Ms. Cassidy recusing.

K. Robert Koontz v. Justice and Public Safety Cabinet

Ms. Goodman moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

L. Vernard LaFavers v. Cabinet for Health and Family Services

Ms. Cassidy moved to accept the recommended order sustaining the appeal to the extent that the demotion was not properly done and dismissing the appeal as to the promotional reversion. Ms. Hendricks seconded and the motion carried 5-0.

M. Prudy Newton v. Embalmers and Funeral Directors Board

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 5-0.

N. Shawn Rudd v. Justice and Public Safety Cabinet

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Goodman seconded and the motion carried 4-0, with Ms. Cassidy recusing.

O. Barbara Srodulski and Robert Edwards v. Labor Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

P. Kathy Stigall v. Justice and Public Safety Cabine

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 5-0.

Q. Michael Yeager v. Transportation Cabinet

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Goodman seconded and the motion carried 5-0.

### Show Cause Orders – No Response Filed – Appeals Dismissed

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There were no responses submitted by the Appellants to the show cause orders.

- R. Terry Clark v. Cabinet for Health and Family Services
- S. Kevin Moss v. Justice and Public Safety Cabinet

Ms. Hendricks moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted dismissing the appeals for failure to timely prosecute the appeals. Ms. Cassidy seconded and the motion carried 5-0.

### 11. **WITHDRAWALS**

Mr. Frazer moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Goodmann seconded and the motion carried 5-0.

- A. James Drake v. Transportation Cabinet
- B. Terrance Fugate v. Kentucky Educational Television
- C. Stacie Hudson v. Personnel Cabinet
- D. Don Livingston v. Transportation Cabinet
- E. Rebecca Morris v. Justice and Public Safety Cabinet
- F. Jeffrey Nelson v. Kentucky Higher Education Assistance Authority
- G. James Schafer v. Transportation Cabinet
- H. Michael Tapscott v. Justice and Public Safety Cabinet
- I. Alvin Wilson v. Transportation Cabinet
- J. Riley E. Wyatt v. Public Protection Cabinet
- K. Linda Beeler v. Education and Personnel Cabinets
- L. Randy Overstreet v. Public Protection Cabinet
- M. Patricia Springer v. Personnel Cabinet

### 12. **SETTLEMENTS**

Ms. Gibson moved to consider the following settlements *en bloc* and to accept the settlements as submitted by the parties sustaining the appeals to the extent set forth in the settlements. Ms. Hendricks seconded and the motion carried 5-0.

- A. Denice Lombardo v. Justice and Public Safety Cabinet
- B. Margie Williamson v. Cabinet for Health and Family Services
- C. Katie Elkins v. Justice and Public Safety Cabinet
- D. Robbin Todd Hamilton v. Justice and Public Safety Cabinet



13. **OTHER**

A. Annual Increments for Executive Director and General Counsel

Mr. Gibson moved to give both the Executive Director and the General Counsel a five percent (5%) increment retroactive to July 1, 2008. Ms. Cassidy seconded and the motion carried 5-0, with Chairman Higgins voting and with Ms. Hendricks abstaining.

Chairman Higgins asked if there was any further business, which Mr. Sipek advised there was not.

There being no further business, Mr. Frazer moved to adjourn; and the motion carried unanimously 5-0. (12:55 p.m.)

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Greg Higgins, Chairman

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Christine J. Goodmann, Vice-Chairman

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Betty Gibson, Member

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Lisa T. Hendricks, Member

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Robert B. Frazer, Member

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M. Suzanne Cassidy, Member